

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LINDA M. HALLER

Plaintiff,

Case No. 09-13582

v.

HONORABLE DENISE PAGE HOOD

**MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL SECURITY,**

Defendant.

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ORDER ACCEPTING REPORT AND RECOMMENDATION

This matter is before the Court on Magistrate Judge Charles E. Binder's Report and Recommendation [**Docket No. 16, filed on August 18, 2010**]. On February 26, 2010, Plaintiff filed a Motion for Summary Judgment [**Docket No. 16**]. The Defendant filed its Motion for Summary Judgment on May 19, 2010 [**Docket No. 15**]. Magistrate Judge Binder issued a Report and Recommendation recommending that Defendant's Motion for Summary Judgment be denied. The Magistrate Judge further recommends that Plaintiff's Motion for Summary Judgment be granted in part, and the Commissioner's decision be reversed and remanded for further proceedings under sentence four of 42 U.S.C. § 405(g). Neither party has filed objections to the Magistrate Judge's Report and Recommendation.

The standard of review to be employed by the Court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). To preserve the right to appeal the Magistrate Judge's

recommendation, Plaintiff was obligated to file objections to the Report and Recommendation within ten days of service of copy, as provided in U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right to an appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). In this case, no objections have been made.

This Court “may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” *Id.*

Judicial review of the Commissioner’s decision is limited in scope to determining whether the findings of fact made by the Commissioner are supported by substantial evidence, and deciding whether the Commissioner employed the proper legal criteria in reaching his or her conclusion. *Garner v. Heckler*, 745 F. 2d 383 (6th Cir. 1984). The credibility findings of an administrative law judge (“ALJ”) must not be discarded lightly and should be accorded great deference. *Hardaway v. Secretary of Health and Human Services*, 823 F. 2d 922, 928 (6th Cir. 1987). A district court’s review of an ALJ’s decision is not *de novo* review. The district court may not resolve conflicts in the evidence nor decide questions of credibility. *Garner*, 745 F. 2d at 397. The decision of the Commissioner must be upheld if supported by substantial evidence, even if the record might support a contrary decision. *Smith v. Secretary of HHS*, 893 F. 2d 106, 108 (6th Cir. 1989). An administrative decision must be affirmed if supported by substantial evidence, even if the Court might arrive at a different conclusion. *Mullen v. Bowen*, 800 F. 2d 535, 545 (6th Cir. 1986) (quoting *Baker v. Heckler*, 730 F. 2d 1147, 1150 (8th Cir. 1984)).

Upon review of the parties’ Motions for Summary Judgment and the Magistrate Judge’s

Report and Recommendation, the Court finds that the Magistrate Judge reached the correct conclusion for the proper reasons.

Accordingly,

IT IS ORDERED that Magistrate Judge Charles E. Binder's Report and Recommendation **[Docket No. 16, filed on August 18, 2010]** is ACCEPTED and ADOPTED as this Court's findings and conclusions of law.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment **[Docket No. 15, filed on May 19, 2010]** is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment **[Docket No. 10, filed on February 26, 2010]** is GRANTED IN PART.

IT IS FURTHER ORDERED that, pursuant to sentence four, this matter is REMANDED for further administrative proceedings consistent with this Order.

IT IS FURTHER ORDERED that this cause of action is DISMISSED.

Dated: January 11, 2011

S/DENISE PAGE HOOD
DENISE PAGE HOOD
United States District Judge

I hereby certify that a copy of the forgoing document was served upon counsel of record on January 11, 2011, by electronic and/or ordinary mail.

S/Shawntel R. Jackson
Case Manager